

FILED

04-22-2021

Clerk of Circuit Court

Manitowoc County, WI

STATE OF WISCONSIN      CIRCUIT COURT      MANITOWOC COUNTY      2021CV000163

DIANNA L. WALLEN  
2350 South 23<sup>rd</sup> Street  
Manitowoc, WI 54220

DANIEL LARSEN  
2350 South 23<sup>rd</sup> Street  
Manitowoc, WI 54220

Plaintiffs,

and

BLUE CROSS BLUE SHIELD OF WISCONSIN  
c/o CT Corporation, Registered Agent  
301 S. Bedford Street, #1  
Madison, WI 53703

WISCONSIN DEPARTMENT OF HEALTH SERVICES  
Office of Legal Counsel  
1 West Wilson Street, #651  
Madison, WI 53707-7850

Involuntary Plaintiffs

vs.

HOBBY LOBBY STORES, INC.  
c/o Corporation Service Company, Registered Agent  
8040 Excelsior Drive, #400  
Madison, WI 53717

HOBBY LOBBY STORE #0358-MANITOWOC  
1140 South 30<sup>th</sup> Street  
Manitowoc, WI 54220

ABC INSURANCE COMPANY

XAVIER BECERRA,  
Secretary of the Department of Health  
and Human Services  
200 Independence Avenue, S. W.  
Washington, D.C. 20201

Defendants.

Personal Injury  
Code No. 30107

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SUMMONS

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THE STATE OF WISCONSIN, to each person and/or entity named above as a defendant:

You are hereby notified that the plaintiffs named above have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, or within forty-five (45) days if the defendant is the State of Wisconsin (or an officer, agent, employee or agency of the State of Wisconsin), or within forty-five (45) days if the defendant is an insurance company or the complaint alleges a tort occurred, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Manitowoc County Clerk of Circuit Court, whose address is 1010 South Eighth Street, Manitowoc, WI 54220, and a copy of the answer must be sent or delivered to Kummer, Lambert, Fox, Glandt & Nelson, LLP, plaintiffs' attorneys, whose address is 927 South 8<sup>th</sup> Street, Manitowoc, Wisconsin 54220. You may have an attorney help or represent you.

If you do not provide a proper answer within the time limits indicated above, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: April 22, 2021

KUMMER, LAMBERT, FOX, GLANDT  
& NELSON, LLP  
Attorneys for Plaintiffs

BY: [Signature]  
Travis K. Glandt, #1032578

PO ADDRESS:

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Manitowoc, WI 54220  
Tel: (920) 683-5499



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2021CV000163

STATE OF WISCONSIN                      CIRCUIT COURT                      MANITOWOC COUNTYDIANNA L. WALLEN and DANIEL LARSEN,  
   Plaintiffs,

and

BLUE CROSS BLUE SHIELD OF WISCONSIN and  
WISCONSIN DEPARTMENT OF HEALTH SERVICES,  
   Involuntary Plaintiffs,

vs.

HOBBY LOBBY STORES, INC.,  
HOBBY LOBBY STORE #0358-MANITOWOC,  
ABC INSURANCE COMPANY and XAVIER BECERRA,  
Secretary of the Department of Health  
and Human Services,  
   Defendants.Personal Injury  
Code No. 30107

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COMPLAINT

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NOW COME the above-named plaintiffs, Dianna L. Wallen and Daniel Larsen, by their attorneys Kummer, Lambert, Fox, Glandt & Nelson, LLP, by Travis K. Glandt, to complain of the defendants as follows:

1. That the plaintiff, Dianna L. Wallen (hereinafter "Dianna"), is an adult resident of the State of Wisconsin, with a mailing address of 2350 South 23<sup>rd</sup> Street, #1001, Manitowoc, WI 54220.

2. That the plaintiff, Daniel Larsen (hereinafter "Daniel"), is the spouse of Dianna and is an adult resident of the State of Wisconsin, with a mailing address of 2350 South 23<sup>rd</sup> Street, #1001, Manitowoc, WI 54220.

3. That upon information and belief, the involuntary plaintiff, Blue Cross Blue Shield of Wisconsin (hereinafter "Blue Cross"), is a Wisconsin insurance corporation with its principal offices located at N17 W24340 Riverwood Drive, Waukesha, WI 53188, and having as its registered agent, CT Corporation System, 301 S. Bedford Street, #1, Madison, WI 53703, and is a part of the Anthem group, and is engaged in the business of providing and administering health care benefits to or on behalf of beneficiaries of the plan

and upon information and belief has provided payments for medical and hospital expenses for Dianna.

4. That the involuntary plaintiff, Wisconsin Department of Health Services, has a mailing address c/o Office of Legal Counsel, 1 West Wilson Street, Room 651, P.O. Box 7850, Madison, Wisconsin, 53707-7850, and has responsibility for administering health care benefits under state and/or federal programs for medical care and services, and upon information and belief, may have paid health care claims on behalf of Dianna for medical care and services rendered as a result of the incident which is the subject of this case.

5. That the defendant, Hobby Lobby Stores, Inc. (hereinafter "Hobby Lobby") is a business organized under the laws of the State of Oklahoma with its principal office located at 7701 SW 44<sup>th</sup> Street, Oklahoma City, OK 73179, and having as its registered agent, Corporation Service Company, 8040 Excelsior Drive, #400, Madison, WI 53717. Hobby Lobby conducts business in the State of Wisconsin, including owning and/or operating the Hobby Lobby store located at 1140 South 30<sup>th</sup> Street, Manitowoc, WI 54220.

6. That upon information and belief, the defendant, ABC Insurance Company, is designated a defendant by a fictitious name pursuant to the provisions of Wisconsin Statute Section 807.12 on the basis that said defendant is unknown to the plaintiff at this time and that said designation represents one or more insurance companies, which, upon information and belief, at all times material hereto, had in full force and effect a policy or policies of liability insurance sold and issued to the defendant Hobby Lobby. Upon information and belief, by virtue of said policy or policies of insurance, ABC Insurance Company is obligated to pay all sums which said defendant may legally become obligated to pay which said insurance applies and subject to the terms and conditions and limitations and exclusions contained in said policy. And further, said ABC Insurance Company is obligated to defend said defendant against the claims made by the plaintiff in the above-entitled litigation and that by the reason thereof, ABC Insurance Company is a proper party defendant in the above-entitled litigation.

7. That the defendant, Xavier Becerra, as Secretary of the United States Department of Health and Human Services, has oversight responsibility for the Centers for Medicare and Medicaid Services ("CMS"), the centers responsible for administering the federal Medicare program. Dianna has applied for Social Security Disability and as a result, may become eligible for Medicare coverage, and thus may have future medical treatment stemming from this incident paid by Medicare. Pursuant to 42 U.S.C. § 1395y(b)(2), Medicare is



entitled to reimbursement for related paid claims if Dianna recovers through a settlement or judgment and future medical treatment claims may be subject to a set aside account for future medical expenses. Plaintiffs assert no claim against the United States, its agencies or employees, and are naming said defendant for the purpose of preserving the reimbursement of expenses paid by Medicare and/or potential set aside account for future medical expenses resulting from the incident that is the subject of this case.

8. That on or about April 23, 2018, Dianna entered the Hobby Lobby location at 1140 South 30<sup>th</sup> Street, Manitowoc, Manitowoc County, Wisconsin as a customer.

9. That while Dianna was shopping in the Hobby Lobby location at 1140 South 30<sup>th</sup> Street, Manitowoc, Wisconsin, a picture frame fell off the wall and struck Dianna in the head causing serious and permanent injuries.

10. That as a direct and proximate result of the incident described above, Dianna received medical attention, incurred pain, suffering and disability, income loss, hospital and medical expenses and, on information and belief, has suffered permanent injuries as a result, and will require continued medical care and will continue to incur pain, suffering, disability and damages into the future.

11. That Dianna's injuries were solely, directly and proximately caused by the negligence of Hobby Lobby, by and through its employees and/or others operating at the direction of Hobby Lobby, for negligently fastening the picture frame to the wall, which picture frame fell and struck Dianna in the head, and Hobby Lobby is liable to Dianna for her injuries.

12. That at all times pertinent to this action, Hobby Lobby was in violation of the Wisconsin Safe Place Statute for failing to do all things reasonably necessary to protect the health and safety of the frequenters of the Hobby Lobby store located at 1140 South 30<sup>th</sup> Street, Manitowoc, Wisconsin, by failing to maintain said store in a safe condition.

13. That said violation of the Wisconsin Safe Place Statute as described above directly and proximately caused Dianna's injuries as set forth above.

14. That at all times pertinent to this action, ABC Insurance Company had in full force and effect a policy or policies of insurance covering Hobby Lobby against liability imposed on Hobby

Lobby by law for damages caused by negligence and is therefore liable to the plaintiffs.

15. That upon information and belief, the involuntary plaintiff, Blue Cross, may claim some subrogated interest for medical bills that have been paid which may be related to the above alleged incident.

16. That upon information and belief, at all times pertinent to this action, the involuntary plaintiff, Wisconsin Department of Health Services, may claim some subrogated interest for medical bills that have been paid which may be related to the above alleged incident.

17. That Dianna may become covered under the federal Medicare program, as overseen by the defendant, United States Secretary of Health and Human Services, and said Medicare program may have made and/or may make medical and hospital expense payments on behalf of Dianna, and therefore Medicare may be entitled to reimbursement under 42 USC §1395y(b)(2), and/or may have an interest in future medical treatment expenses that may be subject to coverage under Medicare.

18. That as a direct and proximate result of the aforementioned incident and the resulting pain, suffering and personal injuries suffered by Dianna, and that she will continue to suffer in the future, Daniel has been deprived of the services, society and companionship of his wife, all to his damage.

WHEREFORE, the plaintiffs demand judgment against the defendants, jointly and severally, for the relief as follows:

- A. For monetary damages for plaintiffs in an amount to be set by jury; and
- B. For all plaintiffs' costs and disbursements incurred in this action; and
- C. For a determination of the subrogated interest, if any, of the involuntary plaintiffs and rights of reimbursement and/or payment of medical bills by Medicare; and
- D. For such other and further relief as the Court may deem just and equitable.

**PLAINTIFFS DEMAND TRIAL BY A 12 PERSON JURY PURSUANT TO WIS. STAT. §805.01(2) AND § 756.06.**



Dated at Manitowoc, Wisconsin this 22nd day of April, 2021

KUMMER, LAMBERT, FOX, GLANDT  
& NELSON, LLP  
Attorneys for Plaintiffs

By: 

Travis K. Glandt, #1032578

PO ADDRESS:

Kummer, Lambert, Fox, Glandt & Nelson, LLP  
927 South Eighth Street  
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